No. 93-144

Supreme Court, U.S.
FILED
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Supreme Court of the United States

OCTOBER TERM, 1993

CITIES OF PALO ALTO, REDDING, ROSEVILLE, BIGGS AND GRIDLEY, CALIFORNIA, AND PLUMAS SIERRA RURAL ELECTRIC COOPERATIVE, INC.,

Petitioners,

v.

HAZEL R. O'LEARY, SECRETARY OF ENERGY, WESTERN AREA POWER ADMINISTRATION OF THE DEPARTMENT OF ENERGY, AND WILLIAM CLAGETT, ADMINISTRATOR OF THE WESTERN AREA POWER ADMINISTRATION,

ARVIN-EDISON WATER STORAGE DISTRICT; BANTA-CARBONA IRRIGATION DISTRICT; BYRON-BETHANY IRRIGATION DISTRICT; GLENN-COLUSA IRRIGATION DISTRICT; JAMES IRRIGATION DISTRICT; SAN LUIS OBISPO WATER DISTRICT; WEST SIDE IRRIGATION DISTRICT; TRINITY COUNTY PUBLIC UTILITIES DISTRICT; HAYFORK VALLEY PUBLIC UTILITY DISTRICT; CALAVERAS PUBLIC POWER AGENCY; TUOLUMNE COUNTY PUBLIC POWER AGENCY; BUREAU OF ELECTRICITY OF THE CITY OF ALAMEDA; AND THE CITIES OF LODI, LOMPOC, UKIAH AND HEALDSBURG, CALIFORNIA,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

APPENDIX

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APPENDIX A

United States Court of Appeals,
Ninth Circuit

No. 91-15168

CITY OF SANTA CLARA,
Plantiff-Appellee,

Cities of Palo Alto, Redding, Roseville, Biggs and Gridley; Plumas-Sierra Rural Electric Cooperative; and Shasta Dam Area Public Utility District,
Plaintiffs-Intervenors-Appellees,

v.

James D. WATKINS, Secretary of Energy, United States Department of Energy, Western Area Power Administration of the Department of Energy; and William Clagett, Administrator of the Western Area Power Administration,
Defendants-Appellants,

Arvin-Edison Water Storage District; Banta-Carbona Irrigation District; Byron-Bethany Irrigation District; Glenn-Colusa Irrigation District; James Irrigation District; San Luis Obispo Water District; West Side Irrigation District; West Stanislaus Irrigation District; Trinity County Public Utilities District; Hayfork Valley Public Utility District; Calaveras Public Power Agency; Tuolumne County Public Power Agency; Bureau of Electricity of the City of Alameda; and the Cities of Lodi, Lompoc, Ukiah and Healdsburg,
Defendants-Intervenors-Appellants.

Argued and Submitted April 16, 1992.
Decided Jan. 28, 1993.

Northern California city with had agreed to purchase hydroelectric power from federal reclamation project brought action for enforcement of memorandum of understanding (MOU) requiring tender of contracts incorporating city's interpretation of "nonwithdrawable." The United States District Court for the Northern District of California, Samuel Conti, J., entered judgment for city, holding that "nonwithdrawable" as used in MOU contained no exceptions allowing seller to withdraw power from its customers on pro rata basis if necessary to satisfy power demands of what parties referred to as "three stated purposes." Seller appealed. The Court of Appeals, Fletcher, Circuit Judge, held that: (1) "nonwithdrawable" was ambiguous, and (2) MOU contemplated that post-MOU sales contracts would contain withdrawal provisions for three stated purposes.

Reversed.

1. Electricity 11(3)

Under California law, "nonwithdrawable," as used in memorandum of understanding (MOU) which expressed parties' agreement to enter into contract for sale of power, was ambiguous; nothing in language of MOU required that "nonwithdrawability" be free of any and all exceptions, and on other hand, nothing in language of MOU required inclusion of provisions allowing utility to withdraw power from its customers on pro rata basis if necessary to satisfy power demands of what parties referred to as "the three stated purposes."

See publication Words and Phrases for other judicial constructions and definitions.

2. Electricity 11(3)

"Nonwithdrawable," as used in memorandum of understanding (MOU) concerning hydroelectric power allocated

to northern California cities, did not mean "nonwithdrawable for any reason," but rather, meant that allocations were subject to withdrawals for three stated purposes which were included in all pre-MOU contracts for sale of power; because all pre-MOU contracts contained withdrawal provisions for three stated purposes, MOU must have contemplated that post-MOU sales contracts would also contain those provisions, which were necessary to maintain seller's statutory and contractual obligations.

Margot de Ferranti (argued) and C. Max Vassanelli, U.S. Dept. of Justice, Washington, DC, for defendants-appellants.

Dian M. Grueneich, Grueneich, Ellison & Schneider, San Francisco, CA, for defendants-intervenors-appellants First Preference Customers.

Michael N. McCarty (argued) and Daniel C. Kaufman, Ritts, Brickfield & Kaufman, Washington, DC, for defendants-intervenors-appellants Irrigation Districts.

Robert A. O'Neil and John Michael Adragna, Miller, Balis & O'Neil, P.C., Washington, DC, for defendants-intervenors-appellants Five Cities.

Barry F. McCarthy, Duncan, Weinberg & Miller, Santa Clara, CA, for plaintiff-appellee.

Reuben Goldberg, Goldberg, Fieldman & Letham, Washington, DC, for plaintiffs-intervenors-appellees.

Appeal from the United States District Court for the Northern District of California.

Before: FLETCHER, POOLE, and BRUNETTI, Circuit Judges.

FLETCHER, Circuit Judge:

Appellants-defendants and appellants-intervenors-defendants (this court previously held them to have a right

to intervene as parties affected by the settlement) appeal the district court's order interpreting a settlement agreement between appellees-plaintiffs and appellants-defendants. At issue is a term in the settlement agreement that the parties neglected to define. The elusive term is "nonwithdrawable" as applied to hydroelectric power allocated to municipalities in northern California. Appellants[1] contend that "nonwithdrawable" is a term of art that incorporates three exceptions. Appellees[2] and the district court interpret the word to mean "not withdrawable for any reason." Our review of the contract, the extrinsic evidence presented to the district court and the statutory and contractual context of the negotiations lead us to REVERSE.

FACTS

This litigation concerns the allocation of hydroelectric power from a federal reclamation project. Details of the dispute as it developed from the early 1960's until 1978 are set forth in prior published opinions. *See City of Santa Clara v. Kleppe*, 418 F.Supp. 1243 (N.D.Cal.1976), *rev'd and remanded, City of Santa Clara v. Andrus*, 572 F.2d 660, 668 (9th Cir.) *cert. denied*, 439 U.S. 859, 99 S.Ct. 176, 58 L.Ed.2d 167 (1978). We summarize that history here.

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[1] Western Area Power Administration ("Western"); Arvin-Edison Water Storage District, Banta-Carbona Irrigation District, Byron-Bethany Irrigation District, Glenn-Colusa Irrigation District, James Irrigation District, San Luis Obispo Water District, West Side Irrigation District and West Stanislaus Irrigation District (the "Irrigation Districts"); the cities of Alameda, Lodi, Lompoc, Ukiah and Healdsburg (the "Five Cities"); public utilities in Trinity, Calaveras and Tuolumne Counties (the "First Preference Customers"); and the Pacific Gas and Electric Company ("PG & E").

[2] The city of Santa Clara; the cities of Palo Alto, Roseville, Redding, Biggs, Gridley and the Plumas-Sierra Rural Electric Cooperative ("Cities"); Shasta Dam Area Public Utility District ("Shasta").

The Central Valley Project (CVP) is a multipurpose federal reclamation project consisting of dams, hydroelectric power plants, transmission lines, and irrigation canals. CVP's primary purpose is irrigation. However, the Reclamation Act of 1939 permits power generated beyond the needs of CVP to be sold or leased. Because CVP power is much less expensive than power purchased from private utilities, customers in Northern California compete vigorously for it. Western is the agency of the Department of Energy that oversees CVP and markets its power.

CVP expanded its generating capacity in the early 1960's, and made contracts to sell the power to numerous customers, including Shasta and Cities. The city of Santa Clara was not among the customers. When it tried to contract for power in 1965, it was informed that all anticipated power was committed to other customers. However, CVP did agree to sell some power to Santa Clara on a "withdrawable" basis. The amount of withdrawable power allocated to Santa Clara grew throughout the late 1960's, and the first withdrawals began in the 1970's.

Santa Clara brought suit in federal court, alleging (among other things) that by allocating "nonwithdrawable power" to some customers but not to Santa Clara, the Secretary violated the statutory command that in sales of CVP power "preference shall be given to municipalities and other public corporations or agencies" and REA cooperative, 43 U.S.C. § 485h(c). *City of Santa Clara v. Kleppe*, 418 F.Supp. 1243 (N.D.Cal.1976). On appeal, we held that the Secretary had unreviewable discretion to determine how allocations among preference customers were made. *City of Santa Clara v. Andrus*, 572 F.2d 660, 668, (9th Cir.), *cert. denied*, 439 U.S. 859, 99 S.Ct. 176, 58 L.Ed.2d 167 (1978). We also held, however, that the Secretary could not continue its practice of selling CVP power to PG & E, a non-preference customer, if a preference customer was willing and able to purchase it. The case was remanded for determination as to whether Santa Clara

was willing and able to buy power allotted to PG & E. *Id.* at 672. Both opinions used the terms "withdrawable" and "nonwithdrawable" but did not discuss whether the latter entailed the exceptions at issue in this case. *See Kleppe*, 418 F.Supp. at 1248 n. 14, 1255, 1259 n. 40, 1262; *Andrus*, 572 F.2d at 663-65, 668.

Extended settlement negotiations followed this court's remand of *Andrus*, and resulted in a Memorandum of Understanding (MOU) dated February 8, 1980. The MOU allocates 472.6 MW of CVP power among the customers that were parties to the *Andrus* suit. It is liberally sprinkled with the terms "withdrawable," "nonwithdrawable," "nonwithdrawable customers," "withdrawable power," and the like. Santa Clara, for example, has the right under the MOU to purchase 65 MW of CVP power "on a nonwithdrawable basis" and an additional 60 MW "on a withdrawable basis." MOU ¶6-7. Nowhere are these terms defined. The parties signed a Mutual Release of claims on August 29, 1980 that expressly incorporated the MOU. The district court approved the settlement and dismissed the lawsuit in an order dated October 3, 1980, but retained jurisdiction for the purpose of entering orders necessary to enforce compliance.

The MOU was not itself a contract for the sale of power; it was a contract to enter into such contracts. *See* MOU ¶24 ("The parties hereto agree to execute those new contracts and amendments to the contracts between any of them which are necessary to implement the commitments contained herein"). The current problem arose when Western sent contracts to individual customers to implement the commitments made in the MOU. The tendered contracts contained provisions allowing Western to withdraw power from its customers on a pro rata basis if necessary to satisfy the power demands of what the parties refer to as "the three stated purposes." Each of the three stated purposes has a statutory or contractual basis:

(1) "Project use" requirements of the CVP, i.e., the power CVP needs to operate its pumping, lighting, maintenance and other operations. Under CVP's enabling statute, the Reclamation Project Act of 1939, no contract for sale of power "shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes." 43 U.S.C. §485h(c). Only the surplus is available for sale.

(2) "First preference" customers in Trinity, Calaveras, and Tuolumne counties, the sites of two of CVP's dams. The statutes authorizing the construction of the Trinity River and New Melones projects require that Western devote up to 25% of the power from those projects to the "first preference" of certain customers in the counties where those projects are located. 69 Stat. 719 (Act of August 12, 1955); 76 Stat. 1173 (Act of October 23, 1962). Public utilities in Trinity, Calaveras and Tuolumne Countries (the "First Preference Customers") are the beneficiaries of this stated purpose.

(3) "Load level protection" that caps deliveries of CVP power at a maximum of 1050 MW. Hydroelectric plants are subject to dips in production. In order to maintain regular output, they require "firming energy" from an outside source. In 1967, PG & E entered into a long-standing contract ("Contract 2948A") to provide Western with up to 1050 MW of firming energy, an expansion from the previous 550 MW. Western's existing contracts with Cities were amended in 1967 to take advantage of the increased capacity.

When the MOU was drafted, the parties considered the possibility of withdrawals for the three stated purposes to be "scant" (to the extent they thought about it at all). Findings at 13. To date, there have never been withdrawals for the three stated purposes. No one knows for certain if withdrawals ever will be necessary, or how extensive they might be. Appellees nonetheless object to the with-

drawal provisions in the tendered contracts. They argue that their allocations of power under the MOU are not withdrawable for any reason. If it become necessary to withdraw allocations of power, Appellees contend, the burden should fall exclusively on those customers that have not contracted for "nonwithdrawable" power. These customers include Appellants Irrigation Districts and the Five Cities.

Appellees applied to the district court for enforcement of the MOU requiring tender of contracts incorporating their interpretation of "nonwithdrawable." The district court issued an order in their favor, holding that the word "nonwithdrawable" as used in the MOU contained no exceptions for the three stated purposes. *City of Santa Clara v. Herrington*, No. C-75-1574 SC (N.D.Cal. October 11, 1985). Arvin-Edison Water Storage District appealed to this court, complaining that it (along with the other Irrigation Districts, the Five Cities and any other preference customers that were not parties to the MOU) should have been allowed to intervene as affected parties. This court agreed, and remanded the case with instructions to permit intervention and to admit additional extrinsic evidence as to the meaning of the MOU. *Santa Clara v. Herrington*, 811 F.2d 1507 (9th Cir. 1987) ("*Remand Order*").

The district court held a four-day evidentiary hearing in July 1990. It held once again that the term "nonwithdrawable" as used in the MOU meant "not withdrawable for any purpose." *Santa Clara v. Watkins*, No. C-75-1574 SC (N.D.Cal. August 20, 1990) ("Findings"). This order is the subject of this appeal.

JURISDICTION

This court has jurisdiction over the district court's final order pursuant to 23 U.S.C. § 1291.

STANDARD OF REVIEW

The interpretation of contracts under California law involves a complex interplay of questions of fact and questions of law. The trial court must first decide whether the contested terms are ambiguous.

> Under California law, the determination of whether a written contract is ambiguous is a question of law that must be decided by the court. Even if the written agreement is clear and unambiguous on its face, the trial judge must receive relevant extrinsic evidence that can prove a meaning to which the language of the contract is "reasonable susceptible." If the court finds after considering this preliminary evidence that the language of the contract is not reasonably susceptible of interpretation and is unambiguous, extrinsic evidence cannot be received for the purpose of varying the terms of the contract. The case may then be disposed of by summary judgment[,] because interpretation of the unambiguous contract is solely a question of law.

Brobeck, Phleger & Harrison v. Telex Corp., 602 F.2d 866, 871-72 (9th Cir.) (citations omitted), *cert. denied*, 444 U.S. 981, 100 S.Ct. 483, 62 L.Ed.2d 407 (1979).

On appeal to this court, the district court's findings of fact themselves are reviewed under the clearly erroneous standard, but the principles of contract law applied to those facts are reviewed de novo." *L.K. Comstock & Co. v. United Engineers & Constructors, Inc.*, 880 F.2d 219, 221 (9th Cir. 1989). *See also Southland Corp. v. Emerald Oil Co.*, 789 F.2d 1441, 1443 (9th Cir. 1986) ("Under California law, the interpretation of a written contract is a matter of law for the court even though questions of fact are involved").

DISCUSSION

A. Is the MOU ambiguous?

[1] The district court examined extrinsic evidence as required by *Brobeck* and directed by this court in *Remand Order*. It concluded that the meaning of "nonwithdrawable" was "clear and unequivocal," and rejected the possibility that it was ambiguous. Findings at 16. This conclusion of law was erroneous.

The MOU nowhere defines its terms. It includes a number of references that can be understood only by going outside the four corners of the document: "load growth", "maximum simultaneous demand", "contract rate of delivery" and so on. The frequency with which "nonwithdrawable" appears, and particularly in its repeated use in the phrase "present nonwithdrawable customers", suggests that it also may have a specialized meaning unique to the MOU.

More important, however, is the fact that "nonwithdrawable" is "reasonably susceptible of interpretation" in either direction. Since, as Western argues, the three stated purposes represent the limits of its legal ability to sell power, one reasonably would expect the MOU to accomodate this reality. Nothing in the language of the MOU requires that "nonwithdrawability" be free of any and all exceptions. On the other hand, nothing in the language of the MOU requires that the three stated purposes be included. Under Appellees' interpretation, Western agreed to provide power to the parties to the MOU that would not be withdrawable for any purpose. If withdrawals become necessary in order to fulfill Western's statutory or contractual obligations, Appellees insist that they come from other customers to which Western had made no commitment for absolutely nonwithdrawable power.

The MOU is not rendered internally inconsistent by either interpretation of "nonwithdrawable." It is an am-

biguous contract as defined by *Brobeck*: one that is "reasonably susceptible" of conflicting readings.

B. What does "nonwithdrawable" mean?

[2] We have a starting point in the reported opinions *Kleppe* and *Andrus*, which set the stage for the MOU negotiations. The parties agree that in those opinion, thew word "nonwithdrawable" was used by the court to distinguish between the types of contracts Santa Clara and Cities had in the late-1960's. Joint Pretrial Statement, CR 463 at 14. In the MOU, "nonwithdrawable" appears to serve the same function: a means of distinguishing the Santa Clara-type contract from a Cities-type contract. (For example, "nonwithdrawable" is often used as an adjective to describe certain customers, as in the phrase "present nonwithdrawable customers.") In short, the MOU appears to be an agreement by Western to sell power to Santa Clara on the same terms it had previously sold power to Cities. The determinative question, therefore, appears to be what Cities' pre-MOU contracts provided.

Contracts for sale of CVP power to Cities executed in 1963 contained explicit clauses authorizing withdrawals and reductions. *See, e.g. Contract for Electric Service to City of Palo Alto, California*, No. 14-06-200-676A, December 4, 1963.[3] Article 9(b) established a mechanism for the withdrawal of power for project use and first preference customers.

> In Order to supply electric energy to preference customers in Trinity County, California, in accordance with the requirements of Reclamation law, [Western] . . . may withdraw electric power and energy, provided for hereunder, in an amount up to 25 per centum of the contract rate of delivery. The United States may at the sole discretion of [Western] reduce the

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[3] The parties stipulated that the Palo Alto contract was typical of the 1963 contracts. Joint Pretrial Statement, CR 463 at Tab C.

> contract rate of delivery for firm power hereunder by any amount necessary to supply the Project use requirements. . . .

Article 9(c) provided for load level protection:

> At times the electric energy requirements under this and similar contracts of the United States with other preference customers for the supply of firm power will be in excess of the energy available for firm load from the Central Valley Project power plants. . . . Any thing to the contrary in this contract notwithstanding, the United States shall not be obligated to furnish energy hereunder in amounts which, together with amounts to be furnished under said other preference customer contracts, are in excess of the limitations stipulated in said Contract [for firming energy with PG & E].

When Contract 2948A expanded PGB& E's commitment to provide firming energy from 550 MW to 1050 MW, Cities' contracts were amended to allow Cities the benefit of the expanded capacity. *Amendment to contract for Electric Service to City of Palo Alto,* August 22, 1967. The relevant portions of Article 9 were replaced with the following:

> [Palo Alto's allotment shall be increased] until the total firm load of all preference customers reaches a simultaneous demand of 1,050 megawatts. In the event, however, that the power or energy available to serve the total firm load of all preference agencies contracting for power and energy is not sufficient, . . . if necessary said contract rate of delivery shall be curtailed so as not to exceed a prorata share of the total power and energy that is available. The total power and energy available to serve preference agency firm load shall be the power and energy generated at project generating plants that is not required for

> project operation or for sale under [the first preference statutes].

This language is not ambiguous. It is a straightforward recital of the three stated purposes. The first quoted sentence provides for load level protection of 1050 MW, and the third quoted sentence assures that project use and first preference customers receive their statutory priority.[4] The district court erred in finding, "the language of the 1967 amendments reasonably subject to both interpretations." Findings at 8. There is no relevant extrinsic evidence in the record that could alter the meaning of the 1967 amendments.

The question remains whether the parties agreed in the course of negotiating the MOU to alter the contents of a typical sales contract. We agree with the district court "that the evidence about the conduct of the parties during the negotiations of the MOU is inconclusive." Findings at 11. The district court's only credibility determination[5] was to reject testimony that representatives of Cities had twice requested "absolutely nonwithdrawable" power and were twice rebuffed by Western. After elimination of this testimony, the only evidence that remains is testimony from Western's witnesses who assumed that "nonwithdrawability" included three exceptions, and from Cities' witness

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[4] Appellees argue that "curtailment" to the level of "power available" as used in the 1967 amendments mean something different from "withdrawal" as used in the 1963 contracts and the MOU. We disagree. Both "withdrawal" and "curtailment" have the same practical effect: the three stated purposes must be satisfied before sales to preference customers begin. In the event that the three stated purposes require so much power as to make it impossible to supply the full Contract Rate of Delivery, all customers will face pro rata reductions.

[5] Appellees' brief reveals a penchant for labelling as "not credible" any potentially damaging testimony from Western's witnesses. *See e.g.*, Red Brief at 20, 28, 40-41. It should go without saying that the only relevant credibility determinations are those made by the district court, not the parties.

who assumed it did not. The mass of documents made a part of the record are similarly uninformative. In none of the correspondence from Western or Cities did either side explicitly or implicitly accept the other's position. The documents merely reiterate each side's understanding of the contract. Most of the time, the three stated purposes were simply not discussed. Because none of the extrinsic evidence relating to the MOU indicates an agreement by the parties to have post-MOU contracts differ from pre-MOU contracts with regard to the three stated purposes, we conclude that the MOU intended continuity with pre-MOU practice.

As did the district court, we reject Cities' contention that Appellants' interpretation denies them all their anticipated benefits from the MOU. Foremost among the benefits received under the MOU is each City's ability to grow into its full allotment at its own pace, without the wasteful race to compete for load growth that characterized the previous arrangement. Findings at 15-16. Under *Andrus*, Western had complete discretion to sell all of its power to other preference customers, leaving Appellees without any CVP power. The MOU spared the Appellees this unfavorable outcome by granting rights to purchase guaranteed amounts of CVP power, subject only to the same withdrawals for the three stated purposes that characterized all of Western's typical pre-MOU sales contracts.

CONCLUSION

The term "nonwithdrawable" as used in the MOU is ambiguous. The most reasonable interpretation is one that requires contracts for sales of power after the MOU that are consistent with those held by Cities prior to the MOU. This was the meaning of "nonwithdrawable" in the *Kleppe* and *Andrus* opinions which spawned the settlement discussions and the MOU. Because all of the pre-MOU contracts contained withdrawal provisions for the three stated purposes, the MOU must have contemplated that post-

MOU sales contracts would also contain these provisions, which were necessary to maintain Western's statutory and contractual obligations.

While we reverse on the merits, we whole-heartedly agree with the district court when it said, "In the final analysis, this action serves as yet another example of how lack of foresight and poor drafting will beget prolonged and expensive litigation. . . . It is unfortunate that the parties' neglect resulted in a judge having to determine what the parties intended ten years after the fact." Findings at 17. We now have twelve years and four judges' investment of judicial resources.

REVERSED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 91-15168
DC #CV-75-0157-SC

CITY OF SANTA CLARA, et al.
Plaintiffs-Appellees

v.

JAMES D. WATKINS, Secretary of Energy; et al.,
Defendants-Appellants,

F I L E D

JUN 23 1993

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ORDER

Before: FLETCHER, POOLE, and BRUNETTI, Circuit Judges

The motion for leave to file reply to appellants and appellants-intervenors response to petition for rehearing and suggestion for rehearing en banc is denied.

The panel as constituted in the above case has voted to deny the petition for rehearing.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C 75-1574 SC

CITY OF SANTA CLARA,

Plaintiff,

v.

JAMES D. WATKINS, et al.,

Defendants,

CITIES OF PALO ALTO, et al.,

Intervenor-Plaintiffs.

ARVIN-EDISON WATER STORAGE DISTRICT,

Intervenor-Defendants.

F I L E D

AUG 20, 1990

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Introduction

At issue in this action is the meaning of the word "nonwithdrawable"[1] as used in a settlement agreement between the parties. This action was filed in July 1975 in this court by the City of Santa Clara ("Santa Clara")

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[1] The words "nonwithdrawable," "on a nonwithdrawable basis," "nonwithdrawable," and "nonwithdrawability" will be used throughout this Order and are intended, as the parties stipulated, to have the same meaning.

challenging the lawfulness of the withdrawal of its allocation of power and energy from the Central Valley Project ("CVP") and the refusal of the Secretary of the United States Department of the Interior ("Secretary") to grant Santa Clara an allocation of power and energy similar to the power and energy allocations of the Cities of Palo Alto, Roseville, Redding, Biggs, and Gridley, Plumas Sierra Electrical Cooperative ("Cities"). Since 1967 Cities have been known as the "load growth Cities." This court entered an order granting in part and denying in part the parties' cross-motions for summary judgment and remanded the case to the Secretary for further administrative proceedings.

On cross-appeals of this court's order by the parties, the United States Court of Appeals for the Ninth Circuit upheld the Secretary's refusal to grant Santa Clara the allocation it sought, but ruled that the Secretary's sale of surplus preference power to Pacific Gas and Electric Company ("PG&E"), a nonpreference utility, in lieu of the sale of that power to a preference entity, ready, able, and willing to use the power, was unlawful unless the sale to the nonpreference utility was necessary to maximize the efficiency of the CVP for irrigation purposes. *City of Santa Clara v. Andrus*, 572 F.2d 660 (1978). The Ninth Circuit remanded the case to this court for the determination of whether Santa Clara was ready, able, and willing to use the surplus power not necessary to maximize the efficiency of the CVP for irrigation purposes.

During the period when the appeal was before the Ninth Circuit, in 1977, the marketing of CVP power and energy through the Department of the Interior's Bureau of Reclamation ("Bureau") was transferred to a new Department of Energy which established the Western Area Administration ("Western") as the regional marketing agency for CVP power.

On remand of the case to this court, Western, Santa Clara, PG&E, and Cities, which had been granted intervention by this Court, undertook settlement negotiations. The settlement negotiations were successfully concluded with the execution of a Memorandum of Understanding ("MOU"), approved by this Court's order of October 3, 1980. In that Order, this court reserved its jurisdiction to enforce compliance with the terms and conditions of the MOU.

Under the terms of the MOU, Santa Clara secured a contract right to purchase "on a nonwithdrawable basis" 65 MW of CVP power for the period January 1, 1980 to December 31, 2004, together with the right to purchase 60 MW of CVP power on a "withdrawable" basis and to continue to receive its existing withdrawable allotment of power. Additionally, Santa Clara received $10 million of the $85 million it had paid into an escrow fund during the litigation. Each Cities received power allocations which, together with their Contract Rates of Delivery ("CRD") under their contracts with Western, were described in the MOU as "nonwithdrawable." Cities also received reimbursement from Santa Clara in the amount of $250,000 of Cities' legal and consultant expenses incurred in the litigation. Western secured agreement from PG&E to increase its support obligation under its contract No. 2948A with Western by 102 MW, from 1050 MW to 1152 MW.

The MOU required implementation of its terms by amendments to existing contracts of Cities and Santa Clara or by new, superseding contracts which Western committed to make available promptly but not prior to execution of the MOU. Western eventually tendered a draft of a new power contract to Cities purporting to implement the terms of the MOU. The tendered drafts contained provisions providing for the withdrawal of Cities' allocations for project use requirements of the CVP, the first preference of customers in Trinity, Calaveras, and Tuolumne Counties, and to hold deliveries of CVP customer power demand

to the support level of 1050 MW PG&E had agreed to under Contract 2948A and 1152 MW under the MOU ("the three stated purposes").

Palo Alto and Roseville objected to the withdrawal provisions, advising that Cities' power allocations were not withdrawable for any reason. Without waiving their objections, Palo Alto and Roseville signed the new contracts that contained the objectionable withdrawable provisions upon inclusion in their contracts a provision giving them the right to apply to this court for enforcement of the MOU under their interpretation. Plumas Sierra refused to sign the contracts and Redding signed the contracts. Santa Clara objected to the withdrawal provisions but signed the contract after Western agreed to exempt 80 percent of the 65 MW from any withdrawals.

Palo Alto separately, and Roseville, Redding, and Plumas Sierra jointly, filed timely applications with this court for an order confirming their interpretation of the MOU regarding the definition of "nonwithdrawable." Western opposed the applications, claiming that "nonwithdrawable" as used in the MOU meant only that the power could not be withdrawn for use by other CVP customers but was subject to withdrawal for the three stated purposes. In an Order dated October 11, 1985, this court confirmed Cities' interpretation that their allocations are "not subject to withdrawal for any of the reasons enumerated by Western in its new allocation contracts." Order at p. 8. This court found that "under Western's version of the settlement agreement, Cities will have exchanged their prior right to grow into the power reserved under Contract 2948A for their load growth for no benefit at all" and that "Cities could not have intended this result by entering into the [MOU]." Order at pp. 6-7. This Order was amended to include Santa Clara.

On appeal, the Ninth Circuit, without reaching the merits of that Order, returned the case to this court with

instructions to admit Arvin Edison Water Storage District, a CVP customer, as an intervenor, to permit it to present its evidence on the meaning of "nonwithdrawable" as used in the MOU. The Ninth Circuit remanded the case due to Arvin Edison's representations in its *amicus* brief that had it known of the proceeding in this court, it could have intervened and presented evidence showing this court's interpretation of the MOU was in error. The Ninth Circuit also permitted that other CVP customers similarly situated be permitted to seek intervention. This court subsequently granted intervention to Arvin Edison, to seven other irrigation districts, to the cities of Alameda, Lodi, Lompac, Ukiah, and Heraldsburg, and four first preference customers located in the first preference counties of Trinity, Calaveras, and Tuolumne Counties to support Western's position (the "Intervenors"). Shasta Dam Area Public Utility District, one of the load growth customers in addition to Cities, intervened in support of Cities' interpretation of the MOU. An evidentiary hearing was held commencing on July 19, 1990 and concluding on July 25.

II. Findings of Fact and Conclusions of Law

1. The Intervenors presented four days of evidence to support their argument that the parties to the MOU intended that the "nonwithdrawable" power allocations were to be subject to withdrawal for the three stated purposes. Much of the evidence was intended to demonstrate that Cities' power allocation before the MOU, under 1967 contracts ("the 1967 amendments"), was subject to withdrawal for the three stated purposes and that the parties did not intend to change the nature of these power allocations in the MOU. The extrinsic evidence offered by the Intervenors is relevant and material to explaining the circumstances surrounding negotiations and execution of the MOU and the content in which the language in question was used.

2. The court finds the evidence regarding the nature of the 1967 amendments with respect to withdrawals to be inconclusive. The parties do not dispute that prior to the 1967 amendments the power allocation to Cities was subject to withdrawal for the three stated purposes. The 1967 amendments deleted from the prior contract the "whereas clauses" referring to the possibility of withdrawals for project use and the first preference of Trinity County and also deleted the provisions expressly authorizing such withdrawals. In place of the provision expressly authorizing these withdrawals, the 1967 amendments provided:

> In the event, however, that the power and energy available to serve the total firm load of all preference agencies contracting for power and energy is not sufficient, . . . if necessary said contract rate of delivery shall be curtailed so as not to exceed the pro rata share of the total power and energy that is available. The total power and energy available to serve preference agency firm load shall be the power and energy generated at project generating plants that is *not required for project operation or for sale* [*to the first preference customers*].

(emphasis added).

The intervenors presented testimony that the 1967 amendments were intended to allow withdrawals for the three stated purposes. Cities contend that this provision merely defined the power which would be used to satisfy the absolutely nonwithdrawable power allocations and that it did not provide the Bureau with the authority to make withdrawals for the three stated purposes. Cities argue that if the parties had intended the Bureau to have such authorization the earlier contracts would not have deleted the "whereas clauses" and the express language providing for withdrawals. They presented testimony that the 1967 amendments did not provide for withdrawal for any reason.

The court finds the language of the 1967 amendments reasonably subject to both interpretations. The second sentence defining the "power available" can be read to support the Intervenors' position; that is, it could be interpreted to define "power available" as a fluid amount which would be diminished if power were needed for project use or for the first preference customer. Under this reading, if the "power available" were diminished so that Cities' CRD's could not be satisfied, then the first sentence authorized the Bureau to "curtail" the Cities power allocations. On the other hand, as Cities argue, the sentence can be read to be a guarantee that the "power available" would not be reduced for project use or for the first preference customers. Under this reading, the curtailment mentioned in the preceding sentence would only occur if for reasons other than project use or first preference customer use the "power available" had to be reduced. Indeed, a witness testified that he believed the curtailment provision was intended to apply to unforeseeable natural occurrences, such as drought, which would reduce the "power available" to the Cities. The court notes, however, that the 90 days notice period in the 1967 amendments undermines this interpretation to some extent; it would not be possible for Western to give warning of a withdrawal 90 days in advance of a sudden natural disaster.

The Intervenor's extrinsic evidence regarding the 1967 amendments is also inconclusive. A March 22, 1967 letter sent to Cities 5 months before they signed the 1967 amendments advised that the amendments would contain "withdrawal provisions" for the needs of the first preference customers. While this letter has some probity regarding the parties' intent, it reflects the Bureau's position 5 months before the contract was signed and does not preclude a finding that the parties negotiated a different agreement regarding the withdrawal of power at the time the 1967 amendments were signed. The letters sent to Cities after the 1967 amendments were signed only reflect

the Bureau's interpretation of the 1967 amendments. The contracts between Cities and PG&E which noted that the 1967 amendments provided for possible withdrawals of the power available are not inconsistent with the Cities' interpretation of the 1967 amendments because the "curtailments" could be for reasons other than project use and first preference customers.

3. Despite the fact that both parties rely on their respective interpretations of the 1967 amendments in arguing their interpretations of the MOU, the court does not believe it must decide conclusively the controversy regarding the 1967 amendments. The evidence before the court establishes that the parties did not have a clear and definite understanding of the nature of the power allocations under the 1967 amendments. The fact the court finds determinative is that before the MOU and, as the court will soon discuss, during the negotiations of the MOU, there was no established meaning of the word "nonwithdrawable" different from the ordinary meaning one would impart to that word, i.e., not withdrawable for *any* reason.

If, as the Intervenors argue, the word "nonwithdrawable" was intended to mean not subject to withdrawal for other CVP customers but subject to withdrawal for the three stated purposes, the court believes that the MOU would have included a definition clearly expressing this meaning because the evidence presented to the court does not establish that the word had acquired this special meaning through custom and usage. The record shows that no CVP customer contract before the MOU used the word "nonwithdrawable" to describe a power allocation. While the record does demonstrate that the word "withdrawable" was used to describe power allocations that could be reduced to satisfy the needs of other CVP customers, it does not follow logically that the word "nonwithdrawable" means that the power allocations cannot be reduced to satisfy the needs of other CVP customers but are subject to withdrawal for the three stated reasons because, pre-

sumably, the "withdrawable" allocations were also subject to withdrawal for the three stated reasons.

4. The court finds that the evidence about the conduct of the parties during the negotiations of the MOU is inconclusive. Mr. Aghjayan, the lead negotiator for the Cities in the MOU negotiations, testified that Cities wanted a firm power commitment from Western and that they would not have entered into the MOU had the power allotments been subject to withdrawal for the three stated purposes. As in the 1985 Order, this court finds the testimony of Western's representatives that during the MOU negotiations they twice rejected Cities' request for absolutely nonwithdrawable power allocations unpersuasive in light of the other evidence. The witnesses do not recall who made the first request and are unable to recall the words in which the request was couched. With respect to the second request, allegedly made by Mr. Aghjayan in a side conversation, Mr. Aghjayan denies making such a request and the witness did not clearly recall the event. No witness testified that this issue was raised during the normal course of the negotiations.

5. The court also finds that the MOU is not rendered internally inconsistent if "nonwithdrawal" is read to mean its ordinary meaning. Paragraph 7's reference to "present nonwithdrawable customers" is clearly defined in the contemporaneously signed Mutual Release between the parties to comprise Cities and Shasta PUD. The Intervenor's reading of paragraph 7 would render the MOU and the Mutual Release inconsistent. The fact that the combined power requirements of Cities and Shasta PUD were far under 1,050 MW—the maximum load level under Contract 2948A—in 1980 does not mean that "present nonwithdrawable customers" included customers whose allocations were subject to withdrawal for the three stated purposes; the Intervenors' argument ignores that the MOU is effective until 2004 and that Cities and Shasta PUD will require more power as they grow.

6. The court finds that Western's own publications belie its interpretation of the MOU. Western's Administrator's Newsletter distributed in July of 1980, after the MOU was signed, described the power allocation as "a specific amount of CVP power that each intervenor city . . . can count on to meet future load growths." This arrangement was described as a "landmark occasion" affecting "all aspects of how the CVP allocates and markets its power." Thus, Western itself suggested that the MOU provided a determinate amount of power to each city and viewed the MOU as a significant break with past practices. The court is cognizant that the likelihood of withdrawals for the three stated purposes was considered scant and that it may not have been—in terms of probability—and exaggeration for Western to describe Cities' power allocations as amounts they could "count on," but Western's use of such unequivocal language undermines Western's position.

7. The court finds that another factor weighing against Western is that in the past Western's contracts with its CVP customers contained explicit withdrawal provisions for the three stated purposes. With the exception of the ambiguous 1967 amendments, all other CVP customer contracts contained clear and unequivocal language providing for such withdrawals. Thus, as the court found in the 1985 Order, " 'Western well knew how to make explicit exceptions to nonwithdrawability' " when they were desired. It seems odd that Western would not as a matter of course included explicit language providing for withdrawals in the MOU if this were the intended result.

8. The court finds that it would not have been nonsensical for Western to have agreed to supply Cities with nonwithdrawable power not subject to withdrawal for the three stated purposes because it is under statutory obligations to provided power for CVP project use and to the first preference customers. The SMUD contracts, extended to 2004 in 1983, allot SMUD 290 MW on an absolutely nonwithdrawable basis. This establishes that Western did

not have an inflexible policy with respect to withdrawal for the three stated purposes and that it was willing to enter into contracts which would adversely affect other CVP customers. Moreover, Federal law providing for the first preference for counties of origin does not require that Cities' allocations of CVP power be subject to withdrawal for such purposes.

9. The court disagrees with the Intervenors' argument that because the Cities' interpretation of "nonwithdrawable" would shift the burden of future withdrawals for the three stated purposes entirely to CVP customers not parties to the MOU, the rule that settlement agreements can only affect the right of the parties thereto or those in privity with them would be violated. Cities' reading of the MOU would not violate contract law because other CVP customers with contracts providing for withdrawal for the three stated purposes have no "right" to not have power withdrawn for those reasons, even if the amount withdrawn is greater because of the MOU. While Western may have made representations to the other CVP customers regarding the likelihood of withdrawals for the three stated purposes and the MOU may render those representations untrue, the other CVP customers would still maintain all their contractual and proprietary rights.

10. The Court finds the evidence regarding the benefits received by the parties to the MOU to be inconclusive. Cities claim that they will have received no benefit if Western's interpretation prevails. Although the court's 1985 Order agreed with Cities' contention, after considering the evidence presented at the evidentiary hearing the court finds that under any interpretation Cities would receive a substantial benefit from the MOU. First, while it is unclear whether Western had an obligation to furnish load-growth power after 1980, at the very least there was an uncertainty which the MOU resolved, eliminating the possibility of costly litigation over this issue and an adverse ruling. Second, Cities received $250,000 as reimbursement for

their legal expenses. Third, even if the MOU power allotments were subject to withdrawal for the three stated purposes, Cities received a "fixed"[2] allocation of power and did not have to compete with each other for the load-growth power as was the case under the previous arrangement. Although Cities' benefit would be greater if the power allotments were not subject to withdrawal for the three stated purposes, they still would have received some benefit under Western's interpretation. Accordingly, the court does not view the issue of benefits received from the MOU as a determinative issue.[3]

11. Although the court finds the meaning of the word "nonwithdrawable" to be clear and unequivocal, even if it were considered "ambiguous" the result would be the same. Western drafted the MOU and it is established contract law that if a term in a contract is ambiguous, the contract should be interpreted most strongly against the party that caused the ambiguity to exist. If Western desired "nonwithdrawable" to mean something other than its ordinary meaning it should have provided that definition in the MOU.

12. In the final analysis, this action serves as yet another example of how lack of foresight and poor drafting will beget prolonged and expensive litigation. Obviously, this is a case where the parties neglected to discuss precisely with one another what they wanted. Moreover, it is hard for the court to believe that Western's drafter did not define "nonwithdrawable" if Western intended the word to mean something other than its regularly understood meaning. It is unfortunate that the parties' neglect

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[2] The power allotments could fairly be characterized as "fixed" if the likelihood of withdrawals for the three stated purposes was very slight and the power could not be withdrawn for any other reason.

[3] Additionally, to the extent that Western's banking arrangement with PG&E was in jeopardy and that this would have an adverse effect on Cities, the MOU eliminated this concern.

resulted in a judge having to determine what the parties intended 10 years after the fact.

III. Conclusion

In accordance with the foregoing, the court finds that the word "nonwithdrawal" in the 1980 MOU means not subject to withdrawal for any reason, including the three stated purposes.

IT IS SO ORDERED.

Dated: Aug. 20, 1990

/s/ Samuel Conti
United States District Judge

APPENDIX D

August 12, 1955 1235

TRINITY RIVER DIVISION, CENTRAL VALLEY PROJECT

[Extracts from] An act to authorize the Secretary of the Interior to construct, operate, and maintain the Trinity River division, Central Valley project, California, under Federal reclamation laws. (Act of August 12, 1955, ch. 872, 69 Stat. 719)

[Sec. 1. Central Valley project. California—Trinity River division authorized.]—For the principal purpose of increasing the supply of water available for irrigation and other beneficial uses in the Central Valley of California, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain, as an addition to and an integral part of the Central Valley project, California, the Trinity River division consisting of a major storage reservoir on the Trinity River with a capacity of two million five hundred thousand acre-feet, a conveyance system consisting of tunnels, dams, and appurtenant works to transport Trinity River water to the Sacramento River and provide, by means of storage as necessary, such control and conservation of Clear Creek flows as the Secretary determines proper to carry out the purposes of this Act, hydroelectric powerplants with a total generating capacity of approximately two hundred thirty-three thousand kilowatts, and such electric transmission facilities as may be required to deliver the output of said powerplants to other facilities of the Central Valley project and to furnish energy in Trinity County: *Provided*, That the Secretary is authorized and directed to continue to a conclusion the engineering studies and negotiations with any non-Federal agency with respect to proposals to purchase falling water

and, not later than eighteen months from the date of enactment of this Act, report the results of such negotiations, including the terms of a proposed agreement, if any, that may be reached, together with his recommendations thereon, which agreement, if any, shall not become effective until approved by Congress. The works authorized to be constructed shall also include a conduit or canal extending from the most practicable point on the Sacramento River near Redding in an easterly direction to intersect with Cow Creek, with such pumping plants, regulatory reservoirs, and other appurtenant works as may be necessary to bring about maximum beneficial use of project water supplies in the area. (69 Stat. 719)

* * *

Sec. 4 [Sale and delivery of additional power available through construction of the division—Preference customers.]—Contracts for the sale and delivery of the additional electric energy available from the Central Valley project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences expressed in the Federal reclamation laws: *Provided*, That a first preference, to the extent of 25 per centum of such additional energy, shall be given, under reclamation law, to preference customers in Trinity County, California, for use in that county, who are ready, able and willing, within twelve months after notice of availability by the Secretary, to enter into contracts for the energy: *Provided further*, That Trinity County preference customers may exercise their option on the same date in each successive fifth year providing written notice of their intention to use the energy is given to the Secretary not less that eighteen months prior to said date. (69 Stat. 720)

APPENDIX E

October 23, 1962 1701

FLOOD CONTROL ACT OF 1962

[Extracts from] An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes. (Act of October 23, 1962, Public Law 87-874, 76 Stat. 1173)

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TITLE II—FLOOD CONTROL

* * * * *

Sec. 203. [Authorization of projects.]—

* * * * *

SAN JOAQUIN RIVER BASIN

[New Melones.]—The New Melones project, Stanislaus River, California, authorized by the Flood Control Act approved December 22, 1944 (58 Stat. 887), here hereby modified substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 453, Eighty-seventh Congress, at an estimated cost of $113,717,000: *Provided*, That upon completion of construction of the dam and powerplant by the Corps of Engineers, the project shall become an integral part of the Central Valley project and be operated and maintained by the Secretary of the Interior pursuant to the Federal reclamation laws, except that the flood control operation of the project shall be in accordance with the rules and regulations prescribed by the Secretary of the Army: *Provided further*, That the Stanislaus River Channel, from Goodwin Dam to the San Joaquin River, shall be maintained by the Secretary of the Army to a capacity of at

least eight thousand cubic feet per second subject to the condition that responsible local interests agree to maintain private levees and to prevent encroachment on the existing channel and floodway between the levees: *Provided further*, That before initiating any diversions of water from the Stanislaus River Basin in connection with the operation of the Central Valley project, the Secretary of the Interior shall determine the quantity of water required to satisfy all existing and anticipated future needs within that basin and the diversions shall at all times be subordinate to the quantities so determined: *Provided further*, That the Secretary of the Army adopt appropriate measures to insure the preservation and propagation of fish and wildlife in the New Melones project and shall allocate to the preservation and propagation of fish and wildlife, as provided in the Act of August 14, 1946 (60 Stat. 1080), an appropriate share of the cost of constructing the Stanislaus River diversion and of operating and maintaining the same: *Provided further*, That the Secretary of the Army, in connection with the New Melones project, construct basic public recreation facilities, acquire land necessary for that purpose, the cost of constructing such facilities and acquiring such lands to be nonreimbursable and nonreturnable: *Provided further*, That contracts for the same and delivery of the additional electric energy available from the Central Valley project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences expressed in the Federal reclamation laws except that a first preference, to the extent as needed and as fixed by the Secretary of the Interior, but not to exceed 25 per centum of such additional energy, shall be given, under reclamation law, to preference customers in Tuolumne and Calaveras Counties, California, for use in that county, who are ready, able, and willing, within twelve months after notice of availability by the Secretary of the Interior, to enter into contracts for the energy and that

Tuolumne and Calaveras County preference customers may exercise their option in the same date in each successive fifth year providing written notice of their intention to use the energy is given to the Secretary not less than eighteen months prior to said dates: *And provided further,* That the Secretary of the Army give consideration during the preconstruction planning for the New Melones project so the advisability of including storage for the regulation of streamflow for the purpose of downstream water quality control. (76 Stat. 1191)

* * * * *

APPENDIX F

PROVISION IN THE CITY OF PALO ALTO CONTRACT, AS AMENDED IN 1967, RELATING TO BILLING ADJUSTMENTS FOR CURTAILMENT OF DELIVERIES OF POWER.

"K. Adjustments for Curtailments to Service.

Billing adjustments will be made if the delivery of electric energy is curtailed because of conditions on the power system of the United States, which system for the purpose of such adjustments hereunder shall include transmission facilities utilized but not owned by the United States, for periods of one (1) hour or longer in duration each. The total number of hours of curtailed service in any billing period shall be determined by adding (1) the sum of the number of hours of interrupted service to (2) the product of: the number of hours or reduced service multiplied by the percentage of said reduction below the lesser of (a) the contract rate of delivery, or (b) the obligation of the United States to deliver firm power and energy as established under the operating agreement entered into pursuant to the Auxiliary Power Service article hereof, or (c) the rate of delivery required by the Contractor at the time of such reduction. The demand or capacity charge, the kilowatt hour blocks of the energy charge, and the minimum charge shall each be proportionately adjusted in the ratio that the total number of hours of such curtailed service as herein determined bears to the total number of hours in the billing period involved. The Contractor shall make written claim, within thirty (30) days after receiving the monthly bill, for adjustment on account of any curtailment to service, for periods of one (1) hour or longer in duration each, alleged to have occurred and which is not reflected in such bill. Failure to make such written claims, within said thirty (30) day period, shall constitute a waiver thereof. All curtailments to service, which are due to conditions on the power system of the United States,

shall be subject to the provisions of this article and the Contractor shall be limited in its remedy to the relief granted by this article; *Provided*, That withdrawal of power and energy under the contract provisions shall not be deemed curtailments to service."

APPENDIX G

LIST OF 20 CONTRACTS WITH THE LANGUAGE INTERPRETED BY THE COURT IN THE CITY OF PALO ALTO CONTRACT AS AUTHORIZING WITHDRAWALS OF POWER FOR PROJECT USE AND THE FIRST PREFERENCE OF THE THREE COUNTIES THAT INCLUDE EXPLICIT PROVISIONS FOR WITHDRAWALS FOR PROJECT USE AND THE FIRST PREFERENCE OF ONLY TRINITY COUNTY.

The 20 CVP contracts, included in Plaintiffs Exhibit No. 26, Volumes I and II, which include the same language interpreted by the Court as a straight forward authorization subjecting Cities' allocation to withdrawal for the three stated purposes, include explicit authorizations for withdrawal only for project use and the first preference of only Trinity County:

Volume I of P. Ex. No. 26

1. United States Department of the Air Force - Article 11(b), pp. 6-7.
2. United States Department of the Army - Article 8(b) pp. 4-5.

Volume II of P. Ex. No. 26

3. Atomic Energy Commission, Lawrence Livermore Laboratory - Article 11(b), pp. 5-6.
4. Atomic Energy Commission, Stanford Linear Accelerator Center - Article 11(b), pp. 5- 6
5. U.S. Department of the Navy-Article 19(b), p. 6.
6. National Aeronautics and Space Administration - Article 9(b), p. 3
7. Deuel Vocational Institution, Dept. of Correction - Article 7(b), pp. 3-4.
8. Folsom State Prison, Dept. of Correction - Article 8(b), pp. 3-4.
9. Department of Youth Authority, California - Article 7(b), pp. 3-4.

10. University of California at Davis - Article 7(b), p. 4.
11. California Medical Facility, Dept. of Correction - Article 7(b), pp. 3-4.
12. Banta Carbona Irrigation District - Article 7(b), pp. 3-4.
13. Byron - Bethany Irrigation District - Article 7(b), pp. 3-4.
14. East Contra Costa Irrigation District - Article 7(b), pp. 3-4.
15. Glenn-Colusa Irrigation District - Article 7(b), pp. 3-4 (only project use).
16. Patterson Water District - Article 7(b), p. 4
17. Provident Irrigation District - Article 7(b), pp. 3-4.
18. San Luis Water District - Article 7(b), p. 4.
19. West Side Irrigation District - Article 7(b), pp. 3-4.
20. West Stanislaus Irrigation District - Article 7(b), p. 4.

APPENDIX H(1)

EXCERPTS FROM CONTRACT FOR ELECTRIC SERVICE TO CITY OF PALO ALTO, CALIFORNIA

1. This contract made this 4th day of December 1963 in pursuance of the Act of Congress approved June 17, 1902 (32 Stat. 388), the Act of Congress approved August 26, 1937 (50 Stat. 844, 850), the Act of Congress approved August 4, 1939 (53 Stat. 1187), the Act of Congress approved August 12, 1955 (69 Stat. 719), and acts amendatory thereof or supplementary thereto, all of which acts are hereinafter called Reclamation Law, between THE UNITED STATES OF AMERICA, hereinafter called the United States, represented by the officer executing this contract, his duly appointed successor, or his duly authorized representative, hereinafter called the Contracting Officer, and the CITY OF PALO ALTO, CALIFORNIA, a municipal corporation hereinafter called the Contractor represented by the officer executing this contract, his duly appointed successor, or his duly authorized representative,

2. WHEREAS, the United States operates an electric power system including generation and transmission facilities as a part of the Central Valley Project and the Contractor operates an electric power distribution system serving the City of Palo Alto, California hereinafter referred to as Contractor's System; and

3. WHEREAS, the United States, by virtue of adding the Trinity River Division powerplants to the Central Valley Project, will have additional power and energy available for sale; and

4. WHEREAS, under Reclamation law which authorized construction of the Trinity River Division, first preference to the extent of 25 per centum of such additional energy must be given, under certain conditions, to preference customers in Trinity County, California; and

5. WHEREAS; withdrawal of power will be necessary to meet project use requirements of the Central Valley Project including those of the Federal San Luis Unit; and

6. WHEREAS, the United States is able to make electric service available to the Contractor and the Contractor desires to obtain such electric service from the United States; and

7. WHEREAS, service hereunder is to be furnished under the terms of certain contracts between the United States and Pacific Gas and Electric Company for the sale and interchange of electric power and energy, Contract No. I75r-3428, and for transmission and exchange service, Contract No. I75r-2650, which expire on April 1, 1971, but are subject to prior cancellation under certain circumstances upon three (3) years advance notice in writing;

8. NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

ELECTRIC SERVICE TO BE FURNISHED

9. (a) The United States, under the terms and conditions stipulated herein, will furnish electric service to the Contractor, from and after the date of initial service as hereinafter defined, at the point at which the 60,000 volt circuits of the Contractor are attached to the 60,000 volt circuits of the Pacific Gas and Electric Company at or near the City of Palo Alto, California. Said electric service will be furnished over facilities of the Pacific Gas and Electric Company under the terms and conditions provided in Contract I75r-2650 between the United States and the Pacific Gas and Electric Company (copies of which are on file in the Regional Office of the United States Bureau of Reclamation at Sacramento, California) or under said contract as it may be amended, or extended, from time to time, or under the terms and conditions of any contract that may supersede or succeed said contract.

(b) Electric power and energy furnished hereunder will be delivered to the Contractor at a nominal delivery voltage of 60,000 volts and will be measured at or near Palo Alto, California at 60,000 volts. Electric energy will be delivered in amounts which the Contractor may from time to time require up to a maximum rate of delivery, hereinafter called the contract rate of delivery for firm power of seventy-nine thousand (79,000) kilowatts. In order to supply electric energy to preference customers in Trinity County, California, in accordance with the requirements of Reclamation law, the Contracting Officer, upon seventeen (17) months advance written notice to the Contractor, may withdraw electric power and energy, provided for hereunder, in an amount up to 25 per centum of the contract rate of delivery. The United States may at the sole discretion of the Contracting Officer reduce the contract rate of delivery for firm power hereunder by any amount necessary to supply the Project use requirements including operation of the Federal San Luis Unit of the Central Valley Project; *Provided*, That the United States shall have given written notice to the Contractor seventeen (17) months in advance of the effective date of such reduction in the contract rate of delivery. Upon receipt of notice of reduction in the contract rate of delivery for firm power, the Contractor may terminate this contract at any time within sixteen (16) months after receipt of such notice by notifying the Contracting Officer in writing six (6) months prior to the desired termination date.

(c) At times the electric energy requirements under this and similar contracts of the United States with other preference customers for the supply of firm power will be in excess of the energy available for firm load from the Central Valley Project powerplants. Such excess will be supplied by the United States through purchases under its Sale and Interchange Contract No. I75r-3428 with the Pacific Gas and Electric Company, or under terms and conditions of any contract that may supersede or succeed said

contract up to such months as are required to bring the total energy deliveries under said preference customer contracts in any month or year up to the respective maximum amounts of firming energy that the Pacific Gas and Electric Company is obligated to supply. The Pacific Gas and Electric Company under said Contract No. I75r-3428, which terminates on April 1, 1971, is obligated to provide energy in sufficient amounts (1) to bring the total energy available in any month up to five hundred fifty (550) kilowatthours for each kilowatt of the simultaneous maximum 30-minute integrated demand in that month under such preference customer contracts, and (2) to bring the total energy available to serve any individual customer's requirements up to six thousand five hundred (6,500) kilowatthours of its maximum 30-minute integrated demand in that year. Any thing to the contrary in this contract notwithstanding, the United States shall not be obligated to furnish energy hereunder in amounts which, together with amounts to be furnished under said other preference customer contracts, are in excess of the limitations stipulated in said Contract No. I75r-3429, or under terms and conditions of any contract that may supersede or succeed said contract.

(d) Availability of electric power and energy to the United States in an amount adequate to meet the contract rates of delivery and electric energy requirements under this and other contracts with preference customers is dependent upon arrangements made in the Sales and Interchange Contract No. I75r-3428 between the United States and the Pacific Gas and Electric Company. The United States may reduce to any amount the contract rate of delivery for firm power hereunder effective on the termination or cancellation of said contract No. I75r-3428; *Provided*, That the United States shall have given written notice to the Contractor ninety (90) days in advance of the effective date of reduction in contract rate of delivery for firm power. The Contractor may terminate this con-

tract at any time within 30 days after receipt of such notice, but not thereafter.

* * * * *

APPENDIX H(2)

EXCERPTS FROM AMENDMENT NO. 3 TO CONTRACT FOR ELECTRIC SERVICE TO CITY OF PALO ALTO, CALIFORNIA

1. This contract made this 22nd day of August 1967 in pursuance of the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto; all of which acts are hereinafter called Reclamation Law, between THE UNITED STATES OF AMERICA, hereinafter called the United States, represented by the officer executing this contract amendment, his duly appointed successor, or his duly authorized representative, hereinafter called the Contracting Officer, and the CITY OF PALO ALTO, CALIFORNIA, a municipal corporation, hereinafter called the Contractor, represented by the officer executing this contract, his duly appointed successor, or his duly authorized representative;

WITNESSETH:

2. WHEREAS, the United States operates an electric power system including generation and transmission facilities as a part of the Central Valley Project and the Contractor operates an electric power distribution system serving the City of Palo Alto, California, hereinafter referred to as Contractor's System; and

3. WHEREAS, the United States has been furnishing electric service to the Contractor under the provision of Contract No. 14-06-200-676A dated December 4, 1963, as amended; and

4. WHEREAS, the Contractor desires increased amounts of electric service and the United States is willing to furnish additional service under the terms and conditions stated herein; and

5. WHEREAS; the parties hereto desire to further amend Contract No. 14-06-200-676A dated December 4, 1963, as

amended, to increase the contract rate of delivery for firm power;

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

6. Articles 3, 4, 6, and 7 of the preamble to Contract No. 14-060200-676A as amended are hereby deleted.

7. Article 9 of Contract No. 14-06-200-676A, as amended, is hereby deleted and in lieu thereof the following is inserted:

> "(a) The United States, from the date of initial service as hereinafter defined, shall furnish electric service to the Contractor at an agreed point near the City of Palo Alto, California. Such service shall be at a nominal delivery voltage of 60,000 volt and shall be measured at or near the point of delivery at 60,000 volts.
>
> "(b) Electric power and energy shall be delivered in such amounts as the Contractor may from time to time require up to a maximum rate of delivery, hereinafter called the contract rate of delivery for firm power, of 100,000 kilowatts. To the extent that power and energy is available, said contract rate of delivery shall be increased from time to time to serve the firm load growth of the Contractor up to the level which the Contractor's firm load reaches in 1980 or until the total firm load of all preference customers reaches a simultaneous demand of 1,050 megawatts. In the event, however, that the power or energy available to serve to total firm load of all preference agencies contracting for power and energy is not sufficient, no further increases in the Contractor's rate of delivery shall be made and if necessary said contract rate of delivery shall be curtailed so as not to exceed a pro-rata share of the total power and energy that is available. The total power and energy available to serve

preference agency firm load shall be the power and energy generated at project generating plants that is not required for project operation or for sale either under Section 4 of the Act of August 12, 1955 (69 Stat. 719), or under that portion of Section 201, Title II of the Act of October 23, 1962, pertaining to the San Joaquin River Basin (76 Stat, 1191-1192) as supplemented by power and energy from such other sources as the United States may in its sole discretion provide. The Contractor's share shall be in the ratio of the Contractor's firm load to the firm load of all such preference agency customers as of the time of any such curtailment.

"(c) If at any time the Contractor gives written notice of desire to increase its contract rate of delivery to service its firm load growth up to the level of its 1980 firm load, and the United States does not agree to such increase in writing within ninety (90) days, the Contractor may terminate this contract at any time within thirty (30) days after expiration of such ninety (90) day period. In the event the United States must curtail an agreed-upon contract rate of delivery, or the energy associated therewith, it shall give written notice to the Contractor ninety (90) days in advance of the effective date of such curtailment, and the Contractor may terminate this contract within thirty (30) days after receipt of such notice."

* * * * *

APPENDIX H(3)

EXCERPTS FROM CONTRACT FOR ELECTRIC SERVICE TO CITY OF PALO ALTO IN PURPORTED COMPLIANCE WITH THE MEMORANDUM OF UNDERSTANDING

1. This contract made this 30th day of April 1985, in pursuance of the Act of Congress approved June 17, 1902 (32 Stat. 388), the Act of Congress approved August 26, 1937 (50 Stat. 844, 850), the Act of Congress approved August 4, 1939 (53 Stat. 1187), the Act of Congress approved August 12, 1955 (69 Stat. 719), the Act of Congress approved October 23, 1962 (76 Stat. 1173, 1191), and the Act of Congress approved August 4, 1977 (91 Stat. 565), and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA, hereinafter called the United States, represented by the officer executing this contract, a duly appointed successor or a duly authorized representative, hereinafter called the Contracting Officer, and the CITY OF PALO ALTO, hereinafter called the Contractor, its successors and assigns,

WITNESSETH:

2. WHEREAS, the United States operates an electric power system including transmission facilities as a part of the Central Valley Project (CVP); and

3. WHEREAS, the Contractor operates an electric utility system hereinafter referred to as the "Contractor's System"; and

4. WHEREAS, the United States has entered into Contract No. 14-06-200-2948A dated July 31, 1967, as amended, with the Pacific Gas and Electric Company (PGandE), which, as such contract may be amended or replaced shall hereinafter be called the PGandE Contract, and said PGandE Contract provides for, among other things, a license to the United States to furnish electric

power and energy to the Contractor over the transmission system of PGandE; and

5. WHEREAS, in settlement of the lawsuit entitled *The City of Santa Clara v. Duncan et al.*, the United States has agreed to increase Contractor's contract rate of delivery in accordance with the terms of the Memorandum of Understanding dated February 8, 1980, between the parties to said lawsuit, hereinafter referred to as the Memorandum of Understanding; and

6. WHEREAS, the parties hereto desire to provide for the conditions under which firm power service will continue to be furnished and also to terminate said Contract, as amended and supplemented, and to incorporate in this new Contract such of the provisions of the terminated contract as remain appropriate; and

7. WHEREAS, under Reclamation Law which authorized construction of the Trinity River Division, and the New Melones Project, first preference to the extent of 25 per centum of the additional energy available must be given, under certain conditions, to preference customers in Trinity, Calaveras, and Tuolumne Counties, California; and

8. WHEREAS, withdrawal of power may be necessary to meet project use requirements of the CVP including those of the Federal San Luis Unit; and

9. WHEREAS, the City of Palo Alto, notwithstanding any provision to the contrary in this Contract, maintains the position that the Memorandum of Understanding excludes Palo Alto's contract rate of delivery from withdrawal as provided in subarticle (b), (c), and (e), of article 13.

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the parties thereto agree as follows:

* * * * *

ELECTRIC SERVICE TO BE FURNISHED

13. (a) The Contractor is entitled to a CRD as specified in Section 2 of Exhibit A. The United States under the terms and conditions stipulated herein, will furnish, deliver, and measure Power to the Contractor's System, from and after the date of initial service as herein defined, at the point(s) and voltage(s) and under the delivery conditions specified in Exhibit C. Said Power will be furnished over the United States' facilities, facilities of its contractors or agents, or facilities of PGandE pursuant to terms and conditions provided in the PGandE Contract (copies of which are on file in the Sacramento Area Office of the Western Area Power Administration in Sacramento, California.

(b) If the United States' position should prevail as provided in subarticle (g) herein, then, in order to supply Power to preference customers in Trinity, Tuolumne, and Calaveras Counties, California, in accordance with the requirements of Reclamation Law, and pursuant to rulemaking proceedings establishing the procedures for withdrawal, the Contracting Officer may, upon ninety (90) days advance written notice to the Contractor withdraw all or part of the Contractor's CRD as specified in Exhibit A of this Contract.

(c) If the United States' position should prevail as provided in subarticle (g) herein, then, in order to supply the project use requirements of the CVP, including operation of the Federal San Luis Unit, the Contracting Officer may, upon six months advance written notice to the Contractor and pursuant to rulemaking proceedings establishing the procedures for such withdrawals, withdraw all or part of the Contractor's CRD.

(d) Upon receipt of notice of reduction in the CRD pursuant to subarticles (b), and (c) above, the Contractor may terminate this Agreement within ninety (90) days after

receipt of such notice by notifying the Contracting Officer in writing prior to the desired termination date.

* * * * *

APPENDIX I

EXCERPTS FROM MEMORANDUM OF AGREEMENT FOR ELECTRIC SERVICE TO ATOMIC ENERGY COMMISSION, SAN FRANCISCO OPERATIONS OFFICE (LAWRENCE LIVERMORE LABORATORY—SITE 300)

1. This Agreement made this 28 day of August ,1973, in pursuance of the Act of Congress approved June 17, 1902 (32 Stat. 388), the Act of Congress approved August 26, 1937 (50 Stat. 844, 850), the Act of Congress approved August 4, 1939 (53 Stat. 1187), the Act of Congress approved August 12, 1955 (69 Stat. 719, 720), and the Act of Congress approved October 23, 1962 (76 Stat. 1173, 1191), and acts amendatory thereof or supplementary thereto, all of which acts are hereinafter called Reclamation Law, and the Atomic Energy Act of 1954, as amended, between the BUREAU OF RECLAMATION, hereinafter called Reclamation, represented by the Officer executing this agreement, his duly appointed successor, or his duly authorized representative, hereinafter called the Contracting Officer, and the ATOMIC ENERGY COMMISSION, hereinafter call the AEC, represented by the Officer executing this agreement, his duly appointed successor, or his duly authorized representative,

WITNESSETH:

2. WHEREAS, Reclamation operates an electric power system including generation and transmission facilities as part of the Central Valley project; and

3. WHEREAS, AEC is a preference customer for electric service from the Central Valley Project as provided in Reclamation Law; and

4. WHEREAS, Reclamation and AEC have entered into and subsequently amended a memorandum of agreement dated June 23, 1964, No. 14-06-200-1026A, for electric service to those electric power distribution systems operated by the AEC at Lawrence Livermore Laboratory, Liver-

more; and Site-300 near Tracy; both located in California and hereinafter referred to as the AEC's power systems; and

5. WHEREAS, the AEC has designated its San Francisco Operations Office to act in behalf of the AEC in contracting with Reclamation for electric service for the above AEC installations situated within the market area of the Central Valley Project; and

6. WHEREAS, Reclamation has been able to make certain additional electric service hereinafter called short term power available to AEC on a withdrawable basis from previously allocated but currently unused firm power and energy, and AEC desires to continue receiving such additional electric service from Reclamation; and

7. WHEREAS, withdrawal of such short term power from the AEC will be necessary from time to time to maintain other preference customer loads; and

8. WHEREAS, withdrawal of power by Reclamation may be necessary to meet Project requirements of the Central Valley Project; and

9. WHEREAS, the United States and the Pacific Gas and Electric Company have entered into a contract expiring January 1, 2005, specifically the Sale, Interchange, and Transmission Contract No. 14-06-200-2498A, hereinafter called the Sales and Transmission Contract, which contract affects service hereunder;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Parties agree as follows:

TERMINATION OF EXISTING MEMORANDUM OF AGREEMENT

10. Memorandum of Agreement No. 14-06-200-1026A, as amended, is terminated on the date this agreement becomes effective.

ELECTRIC SERVICE TO BE FURNISHED

11. (a) Reclamation, under the terms and conditions stipulated herein, will furnish electric service to the AEC at the points at which the circuits of the AEC are attached to the circuits of the Pacific Gas and Electric Company at or near the locations listed in sub-article 11(b), said electric service will be furnished over facilities of the Pacific Gas and Electric Company under the terms and conditions in the Sales and Transmission Contract (copies of which are on file in the Regional Office of Reclamation at Sacramento California) or under said contract as it may be amended or extended, or under the terms and conditions of any contract that may supersede or succeed said contract.

(b) Electric service furnished hereunder will be delivered to the AEC at the listed points of delivery in accordance with the conditions tabulated below:

Item	AEC Installation and Location	Metering and Delivery Point	Delivery Voltage	Metering Voltage
a.	Lawrence Livermore Laboratory Livermore, Ca.	4½ miles east of Livermore near East Avenue and Greenville Road	110,000	13,800
b.	Site-300 near Tracy, Ca.	9 miles Southwest of Tracy and bounding on Corral Hollow Road	110,000	12,000

Electric energy will be delivered in amounts which the AEC may from time to time require up to a maximum rate of delivery, hereinafter called the aggregate contract rate of delivery of 30,900 kilowatts; *Provided*, That electric service furnished to each point of delivery hereunder will

be considered in two classifications, long term power and short term power respectively, the former being supplied from a prior allocation of commercial power form the Project to the AEC, the latter subject to prior allocation of commercial power to other preference agencies, and the sum being the contract rate of delivery of firm power at said points of delivery; and Provided further; That the delivery of short term power hereunder is partially or wholly withdrawable upon 30 days advance notice in writing to the AEC by the Contracting Officer. The contract rates of delivery shall be the sum of long term and short term power to the points of delivery tabulated below:

Item	AEC Installation and Location	Long Term Power	Short Term Power	Contract rate of Delivery
a.	Lawrence Livermore Laboratory, Livermore, California	20.3 MW	7.6 MW	27.9 MW
b.	Site-300, near Tracy California	2.5 MW	0.5 MW	3.0 MW
	Total	22.8 MW	8.1 MW	30.9 MW

Electric service to any point of delivery may be permanently reduced or discontinued, as mutually agreed, on receipt of notice by the Contracting Officer received not less than 30 days in advance of the date on which reduction or discontinuance at said point of delivery is desired by the AEC. The reduced contract rate of delivery at said point of delivery shall be in effect for billing purposes in the billing period next following the date on which said reduction or discontinuance is desired by the AEC. The AEC may request reallocation of the long term power in whole or in part to any other AEC installation listed herein, and/or the Stanford Linear Accelerator Center, Menlo

Park, California. The Contracting Officer shall consider said request for reallocation of long term power from facilities of the Central Valley Project and within 90 days after receipt thereof the Contracting Officer shall inform the AEC of the disposition to be made of the amount of long term power resulting from such reduction. Power and energy delivered to AEC hereunder is part of the power and energy generated at Project generating plants, as supplemented by power and energy from such other sources as Reclamation may provide, which is not required for Project operation or to supply preference customers in Trinity, Tuolumne and Calaveras Counties, California, in accordance with the requirements of Reclamation Law. The Contracting Officer, upon 17 months advance written notice to the AEC may withdraw electric power and energy provided for hereunder in an amount up to 25 percent of the 22,800 kilowatts of power and energy from Trinity River Division Powerplants to supply preference customers in Trinity County except insofar as said 22,800 kilowatts may have been diminished by virtue of the request of the AEC as hereinabove provided. Reclamation may also at the sole discretion of the Contracting Officer reduce the contract rate of delivery for power hereunder by any amount necessary to supply the Project use requirements of the Central Valley Project; Provided, That Reclamation shall have given written notice to the AEC 17 months in advance of the effective date of such reduction in the contract rate of delivery. Delivery of power and energy under this agreement is contingent upon the provisions of the Sale and Transmission Contract, modification, termination, or cancellation of which shall be deemed cause for reduction by any amount of the aggregate contract rate of delivery for power hereunder; Provided; That Reclamation shall have given written notice to the AEC 17 months in advance of the effective date of such reduction in the contract rate of delivery.

* * * * *

APPENDIX J

LISTING OF CENTRAL VALLEY PROJECT POWER CONTRACTS IN EXISTENCE DURING 1980 SETTLEMENT NEGOTIATIONS IN THE ORDER IN WHICH THEY APPEAR IN PLAINTIFFS' EXHIBIT NO. 26, VOLS. I AND II

Volume I of Plaintiffs' Ex. No. 26

CUSTOMER	CONTRACT NO.	DATE
Municipalities		
City of Biggs	14-06-200-3265A	03/08/67
City of Gridley	14-06-200-575A	08/15/63
City of Palo Alto	14-06-200-676A	12/04/63
City of Redding	14-06-200-887A	04/28/64
City of Roseville	14-06-200-586A	08/21/63
City of Santa Clara	14-06-200-2484A	09/30/65
Utility Districts		
Sacramento Municipal Utility District	14-06-200-290	12/11/52 as revised 1/26/54
Shasta Dam Area PUD	14-06-200-2369A	09/27/65
Rural Electric Cooperatives		
Plumas-Sierra	14-06-200-963A	06/08/64
U.S. Government Authorities		
Air Force	14-06-200-7045A	03/27/73
Dept. of the Army	14-06-200-7075A	12/23/74

Volume II of Plaintiffs' Ex. No. 26

CUSTOMER	CONTRACT NO.	DATE
Lawrence Livermore Site 300	14-06-200-7076A	08/28/73
Stanford Linear Accelerator Center	14-06-200-6088A	08/28/73
Dept. of the Navy	14-06-200-7058A	03/09/74
NASA-Ames	14-06-200-7545A	04/30/74
U.S. Information Agency - Dixon	14-06-200-2184A	06/15/65
State Authorities		
Duel Vocational Institution	14-06-200-7448A	09/04/73
Folsom State Prison	14-06-200-7450A	09/19/73
Youth Authority	14-06-200-7366A	09/25/73
University of CA, Davis	14-06-200-7349A	09/28/73
CA Medical Facility Near Vacaville	14-06-200-7449A	09/04/73
Water and Irrigation Districts		
Arvin-Edison Water Storage District	14-06-200-3667A	06/28/68
Banta-Carbona ID	14-06-200-7681A	04/25/74
Byron-Bethany ID	14-06-200-7775A	07/31/74
East Contra Costa ID	14-06-200-7870A	08/30/74
Glenn-Colusa ID	14-06-200-7942A	12/24/74
Patterson WD	14-06-200-8024A	04/29/75
Provident ID	14-06-200-7209A	
Reclamation District 2035	14-06-200-7210A	05/01/73

San Luis WD	14-06-200-7685A	04/26/74
West Side ID	14-06-200-7564A	01/22/74
West Stanislaus	14-06-200-7653A	04/25/74
Westlands WD	7-07-20-P0003	
Westlands WD	14-06-200-3131A	12/01/66

APPENDIX K

ESTIMATED COST OF POWER TO REPLACE WITHDRAWAL OF 25 PERCENT OF CITIES' POWER ALLOCATIONS FOR THE PERIOD FROM 1994 THROUGH 2004, THE REMAINING YEARS OF CITIES' CONTRACTS WITH WESTERN, AND OTHER DATA RESPECTING CITIES

	Population	Service Area (sq. mi.)	Number of Customers	Estimated Increased Cost of Replacement Power Over Power Withdrawn	Average Annual Increased Cost
Biggs	1,679	1[1]	621[1]	$88,809	$8,073
Gridley	4,820	1.5	2,195[2]	$6,760,977[2]	$563,414
Palo Alto	56,000	26	27,220[3]	$169,000,000[3]	$14,083,333
Plumas Sierra	14,376	2,000[4]	5,466[4]	$8,979,073	$816,552
Redding	76,000	58.6	34,896[5]	$83,000,000	$7,545,000
Roseville	53,816	29.2	24,597[6]	$35,000,000	$3,100,000

[1] Biggs actual service are less than 1 square mile. Of the 621 customers, 575 are residential, 45 are commercial, and 1 is industrial.

[2] Of Gridley's 2,195 customers, 1,682 are residential and 513 are commercial. The $6,760,977 is based on the period 1993 through 2004.

[3] Of the 27,220 customers, 24,447 are residential, 2,400 are commercial, 195 are industrial and 178 are in other categories. The $169,000,000 is based on the period 1993 through 2004.

[4] Plumas-Sierra is a Rural Electric Cooperative, serving the Counties of Plumas-Sierra, Lassen and Washoe. The 2,000 square miles comprise the service area of the three counties. Of the 5,466 customers, 4,792 are residential, 525 are commercial, 16 are industrial, and 133 are irrigation customers.

[5] Of the 34,896 customers, 28,982 are residential, 4,869 are commercial and 1,045 are in other categories.

[6] Of the 24,597 customers, 21,511 are residential and 3,086 are either commercial or industrial.